

1 STEVEN A. ELLIS (SBN 171742)
2 *sellis@goodwinprocter.com*
3 LAURA A. STOLL (SBN 255023)
4 *lstoll@goodwinprocter.com*
5 **GOODWIN PROCTER LLP**
6 601 S. Figueroa Street, 41st Floor
7 Los Angeles, CA 90017
8 Tel.: 213.426.2500
9 Fax.: 213.623.1673

6 Attorneys for Defendants:
7 BANK OF AMERICA CORPORATION;
8 BANK OF AMERICA, N.A., for itself and
9 as successor by merger to Countrywide
Bank, FSB; COUNTRYWIDE
FINANCIAL CORPORATION; and
COUNTRYWIDE HOME LOANS, INC.

10 [ADDITIONAL COUNSEL LISTED IN
11 SIGNATURE BLOCK]

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 CITY OF LOS ANGELES, a municipal
16 corporation,

17 Plaintiff,

18 v.

19 BANK OF AMERICA
20 CORPORATION; BANK OF
21 AMERICA, N.A.; COUNTRYWIDE
FINANCIAL CORPORATION;
COUNTRYWIDE HOME LOANS; and
COUNTRYWIDE BANK, FSB,

22 Defendants.

Case No. 2:13-cv-09046-PA-AGR

DISCOVERY MATTER

**STIPULATION REGARDING
DEFENDANTS' MOTION TO
COMPEL RULE 30(b)(6)
DEPOSITION OF PLAINTIFF CITY
OF LOS ANGELES**

Date: March 31, 2015

Time: 10:00 a.m.

Courtroom: B

Magistrate: Hon. Alicia G. Rosenberg

Judge: Hon. Percy Anderson

Complaint filed: December 6, 2013

Discovery Cutoff: September 21, 2015

Pretrial Conference: November 6, 2015

Trial Date: December 1, 2015

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
A. Defendants’ Introductory Statement.....	1
B. The City’s Introductory Statement.....	4
II. The Parties’ Meet and Confer History.	5
A. Defendants’ Statement.	5
B. The City’s Statement.....	7
III. DISCUSSION OF TOPICS IN DISPUTE.....	9
TOPIC NO.13:.....	9
A. Defendants’ Position With Respect to Topic No. 13.....	9
B. The City’s Position With Respect to Topic No. 13	12
TOPIC NO.14:.....	14
A. Defendants’ Position With Respect to Topic No. 14.....	15
B. The City’s Position With Respect to Topic No. 14	16
TOPIC NO.15:.....	17
A. Defendants’ Position With Respect to Topic No. 15.....	18
B. The City’s Position With Respect to Topic No. 15	18
TOPIC NO.16:.....	19
1. Bank of America’s Position With Respect to Topic No. 16	20
2. The City’s Position With Respect to Topic No. 16.....	20
IV. CONCLUSION	21
A. Bank of America’s Conclusion.....	21
B. The City’s Conclusion	21

TABLE OF AUTHORITIES

Page(s)

Federal Cases

<i>3M Co. v. Kanbar</i> , No. C06-01225 JW (HRL), 2007 WL 1794936 (N.D. Cal. June 19, 2007)	13, 17
<i>Bashkin v. San Diego Cnty.</i> , No. 08-cv-1450, 2011 WL 109229 (S.D. Cal. Jan. 13, 2011).....	10
<i>Cable & Computer Tech., Inc. v. Lockheed Saunders, Inc.</i> , 175 F.R.D. 646 (C.D. Cal. 1997).....	12
<i>Canal Barge Co. v. Commonwealth Edison Co.</i> , No. 98-cv-0509, 2001 WL 817853 (N.D. Ill. July 19, 2001).....	11
<i>Cannata v. Catholic Diocese of Austin St. John Neumann Catholic Church</i> , No. 10-cv-375, 2011 WL 221692 (W.D. Tex. Jan. 21, 2011)	11
<i>In re Independent Serv. Orgs. Antitrust Litig.</i> , 168 F.R.D. 651 (D. Kan. 1996)	13
<i>Louisiana Pac. Corp. v. Money Market 1 Inst. Inv. Dealer</i> , 285 F.R.D. 481 (N.D. Cal. 2012)	10, 12
<i>McCormick-Morgan, Inc. v. Teledyne Indus., Inc.</i> , 134 F.R.D. 275 (N.D. Cal. 1991)	12, 19
<i>O'Connor v. Boeing N. Am., Inc.</i> , 185 F.R.D. 272 (C.D. Cal. 1999).....	10
<i>Protective Nat'l. Ins. Co. of Omaha v. Commonwealth Ins. Co.</i> , 137 F.R.D. 267 (D. Neb. 1989)	11
<i>Sec. Ins. Co. of Hartford v. Turstmark Ins Co.</i> , 218 F.R.D. 29 (D. Conn. 2003)	11
<i>Silgan Containers v. Nat'l Union Fire Ins., et. al.</i> , No. 09-cv-5971, 2010 WL 5387748 (N.D. Cal. Dec. 21, 2010).....	10

1	<i>United States v. Taylor,</i>	
2	166 F.R.D. 356 (M.D.N.C. 1996).....	12, 16

Other Authorities

5	C.D. Cal. Local Rule 37-1	5, 6
6	C.D. Cal. Local Rule 37-2	1
7	C.D. Cal. Local Rule 6-1	1, 2
8	Fed. R. Civ. P. 30(b)(6)	<i>passim</i>
9	Fed. R. Civ. P. 33.....	12
10	Fed. R. Civ. P. 37.....	5
11	Fed. R. Civ. P. 37(b)(ii)	1

Pursuant to Federal Rule of Civil Procedure 37(b)(ii) and Central District Local Rule 37-2, Defendants Bank of America Corporation; Bank of America, N.A.; Countrywide Financial Corporation; Countrywide Home Loans; and Countrywide Bank, FSB, (collectively “Defendants” or “Bank of America”) and Plaintiff City of Los Angeles (“Plaintiff” or the “City”) respectfully submit the following *Stipulation Regarding Defendants’ Motion to Compel Rule 30(b)(6) Deposition of Plaintiff City of Los Angeles*.

I. INTRODUCTION

A. DEFENDANTS’ INTRODUCTORY STATEMENT

This dispute is over the City’s refusal to provide a Rule 30(b)(6) witness on four factual deposition topics that are directly relevant to a motion for summary judgment on statute of limitations issues that Judge Anderson has required to be filed by Defendants by March 30, 2015.¹ Defendants ask that the Court order the City to provide a witness on the topics no later than April 3, 2015 so the testimony may be incorporated into the summary judgment briefing (as Judge Anderson would expect). Given the City’s refusal to provide a witness (and to timely admit that it had no intention of complying), Defendants bring this motion to obtain that testimony before the briefing on the summary judgment motion is complete.

In this matter the City has alleged that the Defendants engaged in several different forms of discriminatory mortgage lending in Los Angeles, including originating several different types of “predatory” loan products and/or terms (by several different entities) that allegedly “shift[ed]” over time from 2008 to the present. Complaint (“Compl.”), Dkt. No. 1, ¶ 86. The Defendants filed a motion to dismiss that argued, in part, that the City had not alleged any discriminatory conduct

¹ Judge Anderson ordered April 27, 2015 “as the last date for the hearing on defendants’ contemplated motion for summary judgment focused on their statute of limitations defense.” Order, Dkt. No. 80. Under Local Rule 6-1, Defendants must file its summary judgment brief by March 30, 2015.

1 within the Fair Housing Act's two-year limitations period, and therefore the claim
2 was time-barred, and the City could not invoke the continuing violations doctrine to
3 go back further in time. Memorandum, Dkt. No. 27-1, at 17-18. The Defendants
4 argued that the City had attempted to piece together different types of conduct by
5 different entities involving different types of loans, and that the City itself admitted
6 in the Complaint that all of these elements changed over time. *Id.* at 18. Judge
7 Anderson denied the motion to dismiss, but noted multiple times in his decision that
8 the statute of limitations issues, *i.e.* what conduct actually occurred within the two-
9 year limitations period, would be appropriate for further consideration after
10 necessary fact discovery. Order ("MTD Order"), Dkt. No. 50, at 10-11, 15.

11 Once discovery opened, the parties agreed to limit the initial phase of
12 discovery to concentrate on the discriminatory conduct that allegedly occurred
13 within the two-year limitations period, *i.e.* conduct since December 6, 2011 (the
14 "Limitations Period"). *See* Compl. (filed on December 6, 2013). After conducting
15 certain Limitations Period written discovery, including the Defendants' production
16 of relevant policies and loan data, the parties submitted a joint Stipulation to the
17 Court seeking to extend the discovery and trial dates in this matter, in part to allow
18 time within the discovery schedule for the Defendants to file, and Judge Anderson to
19 rule on, an anticipated motion for summary judgment as to statute of limitations
20 issues. *See generally* Joint Appl. to Amend Scheduling Order ("Joint Stipulation"),
21 Dkt. No. 79 (Jan. 30, 2015). On February 3, 2015, Judge Anderson denied the
22 Stipulation, but extended the discovery and trial deadlines, and specifically ordered
23 the Defendants to notice for hearing any statute of limitations motion for summary
24 judgment no later than April 27, 2015. Minute Order, Dkt. No. 80. Based on the
25 Court's procedural rules, Defendants have until March 30, 2015 to move for
26 summary judgment on statute of limitations issues. Local Rule 6-1.

27 On February 6, 2015, Bank of America served a Notice of Deposition of
28 Plaintiff City of Los Angeles Pursuant to Federal Rule of Civil Procedure 30(b)(6),

1 Declaration of Steven A. Ellis (“Ellis Decl.”), Exh. 1 (“the Notice”). The Notice
2 included four topics that cut directly to the heart of what conduct the City contends
3 occurred within the Limitations Period (the “Limitations Topics”). The City has
4 objected to the Limitations Topics, refused to provide any witness, and instead
5 argued they should be answered through contention interrogatories. After three
6 different telephonic meet and confers by the parties on this issue, and numerous
7 written communications, it is now unfortunately necessary for the Defendants to ask
8 this Court to compel the City to provide a witness as to its own claims.

9 As detailed below, the Limitations Topics each seek for the City to identify
10 the facts underlying its claim that discrimination occurred within the Limitations
11 Period. They seek such basic information as: What loan products and/or terms do
12 you believe were discriminatory in the Limitations Period? What factual evidence
13 of discriminatory conduct within the Limitations Period do you have? What
14 conduct do you believe was the “continuing violation” with the Limitations Period?
15 What conduct do you claim occurred both before and after the Limitations Period
16 (and so, therefore, is what you say continued)? These types of facts are an essential
17 part of the investigation Bank of America is conducting in preparation for its
18 summary judgment motion, and the resulting evidence will necessarily assist Judge
19 Anderson in deciding that motion. Bank of America will be severely prejudiced if it
20 is unable to incorporate the requested deposition testimony into the factual record
21 that will be before Judge Anderson on the motion for summary judgment.

22 The City has objected to the Limitations Topics on the grounds that
23 contention interrogatories are a more appropriate way to pursue this discovery. This
24 position is not only legally incorrect, but also particularly egregious in light of the
25 City’s intentionally vague and deficient responses to Bank of America’s
26 Interrogatories on this subject. *See, e.g., Supra* II.A. Further, even if the City did,
27 at some point, provide more detailed responses to the pending Interrogatories, those
28 responses would still not allow the Defendants to sufficiently explore the underlying

1 facts regarding the City's claims of discriminatory conduct within the Limitations
2 Period. Given the City's own failure to supplement its Interrogatory Responses,
3 despite repeated requests from the Defendants, the City's suggestion to answer
4 through contention interrogatories would essentially run out the clock on the
5 Defendants ability to conduct any follow-up on these topics prior to the completion
6 of summary judgment briefing. In short, Defendants are entitled to a deposition on
7 the Limitations Topics and, as a practical matter, this is the only way to ensure the
8 City provides the necessary information by the summary judgment deadline.

9 **B. THE CITY'S INTRODUCTORY STATEMENT**

10 This dispute arises out of Bank of America's unreasonable effort to compel
11 the City's non-attorney Rule 30(b)(6) witness to provide testimony on the complex
12 legal concepts underlying the City's contentions. While the City has agreed to
13 furnish a Rule 30(b)(6) witness on twelve of Bank of America's seventeen topics,
14 and the parties have reached an agreement on one other topic, these four remaining
15 topics ("Topics 13-16") are unquestionably inappropriate for deposition. Topics 13-
16 16 all require sophisticated legal analysis and are anything but "basic" or "factual"
17 in nature despite Bank of America's claims to the contrary. Clearly, written
18 responses are more appropriate for Topics 13-16. Accordingly, the City respectfully
19 requests that this Court sustains the City's objections and deny testimony on Topics
20 13-16.

21 Topics 13-16 generally inquire as to what the City "contend[s]" is the
22 "LENDING DISCRIMINATION" at the heart of this case. Apart from the obvious
23 observation that each topic uses the word "contend" at least once, Bank of
24 America's own definition of "LENDING DISCRIMINATION" is long and
25 complex. The definition requires sophisticated legal judgment and analysis such
26 that even the most prepared non-lawyer 30(b)(6) deponent would struggle to provide
27 an adequate response in the deposition context. Moreover, the "basic information"
28 Bank of America describes above is no more "basic" than it is "factual." As a

1 result, a deposition is simply not the best device for Bank of America to acquire the
 2 discovery it seeks with Topics 13-16. In such instances, case law unquestionably
 3 supports the City's position that Bank of America should seek this discovery
 4 through alternative methods.

5 In an effort to accommodate Bank of America and generally comply with the
 6 rules of the discovery process, the City has proposed responding through written
 7 responses to contention interrogatories. With the assistance and judgment of
 8 counsel, responses to contention interrogatories present a greater likelihood that
 9 Bank of America will actually receive the discovery it desires. Bank of America has
 10 rejected this proposed solution believing that it is "entitled" to a deposition on these
 11 topics when, in fact, *none* of the case law Bank of America cites actually supports
 12 its position. By bringing this motion to compel, Bank of America seems determined
 13 to harass a non-attorney Rule 30(b)(6) witness with questions Bank of America
 14 knows he or she could not reasonably answer. The City believes that more
 15 productive alternatives exist, and requests that this Court require Bank of America
 16 to pursue those alternatives.

17 18 **II. THE PARTIES' MEET AND CONFER HISTORY.**

19 **A. DEFENDANTS' STATEMENT.**

20 Pursuant to Fed. R. Civ. P. 37 and Local Rule 37-1, the parties have engaged
 21 in extensive meet and confer efforts to resolve the dispute that is the subject of this
 22 Motion. After the Notice was served on February 6, 2015, the parties engaged in
 23 their first meet and confer session on the Limitations Topics on February 11, 2015.
 24 The Defendants understood from that telephonic meet and confer that the City had
 25 agreed to provide, or was at least considering providing, a witness on the
 26 Limitations Topics. The Defendants followed-up with emails dated February 13,
 27 2015, February 18, 2015, and February 19, 2015, asking for deposition dates for the
 28 Limitations Topics. *See* Ellis Decl., Exhs. 2-4. With the City still not having

1 provided an available date for any of the deposition topics (including the 13 other
2 topics in Bank of America's 30(b)(6) notice), the parties conducted another
3 telephonic meet and confer session on February 23, 2015. At that session, nearly
4 three weeks after the Notice was served and barely a month before the summary
5 judgment brief was due, the City informed Defendants, for the first time, that no
6 witness would be offered on the Limitations Topics, and the City agreed to provide
7 a letter putting its position in writing. That letter, served later that night, claimed
8 that Topic Nos. 13 to 16 were better suited as contention interrogatories. *See Ellis*
9 *Decl.*, Exh. 5. Bank of America responded to this Letter on February 24, 2015,
10 disagreeing with the City's argument, and invoking this Court's Local Rule 37-1
11 dispute resolution procedure. *See Ellis Decl.*, Exh. 6. The parties then conducted a
12 third meet and confer the next day, February 25, 2015, in which the City confirmed
13 that it would not provide a witness on the Limitations Topics. The parties agreed
14 that it would be necessary to seek the Court's involvement to reach a resolution to
15 the dispute.

16 The Defendants note they have also attempted to explore these areas of
17 inquiry through written discovery and meet and confers on that discovery, but the
18 City has largely objected and provided no responses or, where it did respond, only
19 provided vague and equivocal responses. *See Ellis Decl.*, Exh. 7 ("Interrogatory
20 Responses"). Specifically, Bank of America requested that the City identify the
21 Bank of America policies that the City believes to be discriminatory (Interrogatory
22 No. 3), the time periods it believes such policies were used by Bank of America
23 (Interrogatory No. 4), and the loan terms that the City believes to be at issue in the
24 litigation (Interrogatory No. 5). *Id.* The City objected, and provided only an
25 incomplete and heavily-qualified response to Interrogatory No. 3, and failed to
26 provide any substantive response to Interrogatory Nos. 4 and 5. *See Interrogatory*
27 *Responses*, Nos. 3-5. Notably, the City claimed at the time these were "premature"
28 contention interrogatories. Defendants have met and conferred with the City on

1 these insufficient responses, and exchanged multiple letters requesting
2 supplementation in specific ways, which the City has not done.² Because that meet
3 and confer process is ongoing, the City's insufficient Interrogatory Responses are
4 not a subject of this Motion, but do provide further detail on why the City's proposal
5 to respond to the Limitations Topics with interrogatory responses is antithetical to
6 how they have responded to all discovery efforts to-date in this matter.

7 **B. THE CITY'S STATEMENT.**

8 The parties agree that there have been extensive meet and confer efforts to
9 resolve this dispute. Fortunately, many of the issues between the parties have been
10 resolved through this process. On February 6, 2015, Bank of America served a
11 Notice of Deposition of Plaintiff City of Los Angeles Pursuant to Federal Rule of
12 Civil Procedure 30(b)(6), Declaration of Steven A. Ellis ("Ellis Decl."), Ex. 1 ("the
13 Notice"). Out of the original seventeen topics included in the Notice, only topics
14 13-16 remain at issue.

15 Upon receiving the Notice, the City began the process of seeking out the
16 appropriate individual to serve as the City's 30(b)(6) designee. Bank of America
17 was entirely aware throughout the meet and confer process that the City was
18 actively seeking a 30(b)(6) designee and available dates for the deposition. Ellis
19 Decl., Ex. 4. Further, the City clearly communicated that it would "make a
20 concerted effort to accommodate [Bank of America's] summary judgment motion
21 timeline." *Id.* On February 18, 2015, Bank of America communicated that "[n]o

22
23 ² The parties met and conferred on November 6, 2014 regarding the insufficiency
24 of the Interrogatory Responses and the Defendants asked the City to supplement its
25 responses. The City never provided any supplementation. Defendants again asked
26 for a supplemental response in a January 7, 2015 letter to Plaintiff. *See* Ellis Decl.,
27 Ex. 8. In its January 21 responsive letter, the City provided no substantive response
28 to these Interrogatories, other than to repeat its belief that they are "premature
contention interrogatories" and state that it will "revisit [the] interrogator[ies] at an
appropriate time." Ellis Decl., Ex. 9. As of the date of this filing, the City has
provided no response, despite being asked to do so again in a February 13, 2015
Letter by Defendants to the City. *See* Ellis Decl., Ex. 10.

1 matter what, we need the deposition(s) [of the City's 30(b)(6) designee] completed
2 on those topics by March 17[, 2015]." Ellis Decl., Ex. 3.

3 On February 23, 2015, only seventeen days after the Notice was served, and
4 exactly five weeks before the summary judgment brief was due, the City expressed
5 its position Topics 13-16 were better answered as contention interrogatories rather
6 than through a 30(b)(6) deposition. That same evening, the City provided a letter
7 that informed Bank of America of the substantive case law supporting its position.
8 See Ellis Decl., Ex. 5. On February 24, 2015, Bank of America responded that it
9 disagreed with the City's argument. See Ellis Decl., Ex. 6. However, Bank of
10 America entirely failed to provide a legal basis for its position. *Id.*

11 In response to Bank of America's "need" for a deposition on or before March
12 17, 2015, on February 25, 2015, the City communicated that the City's 30(b)(6)
13 designee would be available March 17, 2015 on Topics 1-12. Declaration of
14 Christopher R. Pitoun ("Pitoun Decl."), Ex. A.

15 Bank of America claims that the City's refusal to provide substantive
16 responses to Interrogatories 3, 4, 5 is part of what necessitates this motion. See Ellis
17 Decl., Ex. 7 ("Interrogatory Responses"). However, when the City initially
18 responded on October 30, 2014, responses to these Interrogatories were indeed
19 premature since the parties had not yet exchanged documents. Pitoun Decl., Ex. B.
20 Since production of documents began on December 18, 2014, the City has received
21 thousands of pages of policies and numerous data spreadsheets to identify evidence
22 to support its legal contentions. Moreover, Bank of America simultaneously admits
23 that the meet and confer process regarding these Interrogatories is ongoing. Simply
24 put, to adequately familiarize a non-attorney 30(b)(6) witness(es) on this volume
25 information is not only impractical, it would fail to solve Bank of America's alleged
26 desire to take discovery on the City's claims.

1 **III. DISCUSSION OF TOPICS IN DISPUTE**

2 **TOPIC NO.13:**

3 What YOU contend is the LENDING DISCRIMINATION that YOU allege
4 DEFENDANTS engaged in from December 6, 2011 and after.

5 **RESPONSE TO REQUEST NO. 13:**

6 Plaintiff incorporates by reference each of the General Objections as though
7 fully set forth herein. In addition to the General Objections, Plaintiff objects to this
8 Topic as vague and ambiguous, particularly as to the terms “contend” and “engaged
9 in.” Plaintiff also objects to this Topic as cumulative. Further, Plaintiff objects that
10 this Topic is overbroad and unduly burdensome insofar as: a) it seeks information
11 that is neither relevant to the claims or defenses in this action and b) is not
12 reasonably calculated to lead to the discovery of admissible evidence. Moreover,
13 Plaintiff objects to this Topic as overbroad in its use of the overbroad definition of
14 YOU. Plaintiff also objects to this Topic to the extent it seeks information that is
15 protected by the attorney-client privilege, attorney work product doctrine, and seeks
16 expert and legal testimony from a lay witness. In addition, Plaintiff objects that this
17 Topic is more appropriately addressed through contention interrogatories.

18 Without waiving any of its General or Specific objections, Plaintiff responds
19 that a deposition is not appropriate regarding this Topic. Plaintiff is willing to
20 continue to meet and confer with Defendants and, without any waiver of objections,
21 provide a substantive responsive to a contention interrogatory on this Topic.

22 **A. DEFENDANTS’ POSITION WITH RESPECT TO TOPIC NO. 13**

23 The relevance of this topic (and the other Limitations Topics) is not disputed,
24 as Judge Anderson has ruled, and the parties have stipulated, that what took place
25 during the Limitations Period is highly-relevant to this action and appropriate for a
26 summary judgment motion. MTD Order at 10-11, 15 & Joint Stipulation. Topic
27 No. 13 requests deposition testimony on the nature of the racial discrimination that
28 the City believes Bank of America engaged in during the Limitations Period. Judge

1 Anderson is expecting briefing from the parties on this issue. *See* Minute Order,
2 Dkt. No. 80. Bank of America is, thus, entitled to discovery of any evidence the
3 City has regarding whether Defendants engaged in discriminatory conduct during
4 the Limitations Period.

5 This Topic seeks to answer factual questions that directly relate to the issues
6 that will be raised in the summary judgment motion, including: (1) the types of loan
7 products or loan terms within the Limitations Period that the City is challenging; (2)
8 the City's evidence, if any, as to whether lending discrimination by Defendants in
9 fact occurred during the Limitations Period, and (3) identification of the Defendants'
10 practices or policies in the Limitations Period that the City believes were
11 discriminatory.

12 In general, depositions are the "favored" means to attain such factual
13 information because they "provide[] a means to obtain more complete information."
14 *Louisiana Pac. Corp. v. Money Market I Inst. Inv. Dealer*, 285 F.R.D. 481, 486
15 (N.D. Cal. 2012) (quoting *Marker v. Union Fidelity Life Ins.*, 125 F.R.D. 121, 126
16 (M.D. N.C. 1989)). Compared to written interrogatories, depositions are considered
17 to be "ultimately more productive" as a general rule. *O'Connor v. Boeing N. Am.,*
18 *Inc.*, 185 F.R.D. 272, 277 (C.D. Cal. 1999) (classifying written interrogatories as
19 "not likely to be particularly helpful or useful").³ California courts order
20 depositions under similar scenarios where the testimony sought is similarly factual
21 in nature. In *Silgan Containers v. Nat'l Union Fire Ins., et. al.*, No. 09-cv-5971,
22 2010 WL 5387748 (N.D. Cal. Dec. 21, 2010), for example, the district court
23 delineated that there was a distinction between "legal opinions" and "facts." *Id.* at
24 4. The court ordered that a witness be produced on various 30(b)(6) topics seeking
25 "facts, not legal opinions, that [the insurer] relies on to deny coverage." *Id.* at 4-5.

26 ³ *See also Bashkin v. San Diego Cnty.*, No. 08-cv-1450, 2011 WL 109229, at 16
27 (S.D. Cal. Jan. 13, 2011) (rejecting motion to compel further interrogatory response
28 because "topic more aptly explored in [defendant's] deposition than through written
interrogatories").

1 Other courts have similarly determined that 30(b)(6) depositions may be used for
2 testimony seeking questions of fact.⁴

3 The reason for this preference for depositions is elucidated by the City's own
4 Interrogatory Responses, which provide incomplete and vague information
5 regarding this issue that, even if supplemented by the City, would require
6 exploration through a deposition. The City's current position that interrogatories are
7 the more appropriate method to respond to these topics is ironic given that when
8 propounded interrogatories on these very topics, the City evaded response – in part,
9 because they were allegedly “contention interrogatories.” For example, for
10 Interrogatory No. 3, Defendants asked the City to “[i]dentify each challenged policy
11 that [it] alleges violates the FHA [and] constitutes discriminatory mortgage lending
12 conduct” The City objected that the Interrogatory was a “premature contention
13 interrogatory” and then identified vague policies such as “targeting of minority loan
14 applicants and minority neighborhoods in Los Angeles for predatory loans” and
15 “abandoning a meaningful underwriting review.” Interrogatory Responses, No. 3
16 (Ellis Decl., Exh. 7). Furthermore, the City qualified that its response only
17

18 ⁴ See, e.g., *Cannata v. Catholic Diocese of Austin St. John Neumann Catholic*
19 *Church*, No. 10-cv-375, 2011 WL 221692, at 1 (W.D. Tex. Jan. 21, 2011) (ruling
20 that a deposition is more appropriate than follow-up contention interrogatories on
21 the “factual basis ...for certain statements contained in the Defendant’s response to
22 [plaintiff’s] Charge” because “follow up questions are easily asked, and details of
23 the facts of a case are better discovered”); *Sec. Ins. Co. of Hartford v. Turstmark Ins*
24 *Co.*, 218 F.R.D. 29 (D. Conn. 2003) (compelling deposition testimony on factual
25 bases for defendant’s denials in its answer to complaint; holding “[i]t is no
26 consequence that contention interrogatories may be the more appropriate route to
27 obtain the information as nothing precludes a deposition either in lieu of or in
28 conjunction with such interrogatories”); *Canal Barge Co. v. Commonwealth Edison*
Co., No. 98-cv-0509, 2001 WL 817853, at 2 (N.D. Ill. July 19, 2001) (denying
motion to quash deposition testimony because “fact-specific inquiries” into
opposing party’s position “are more appropriately posed in a Rule 30(b)(6)
deposition rather than through contention interrogatories”); *Protective Nat’l. Ins.*
Co. of Omaha v. Commonwealth Ins. Co., 137 F.R.D. 267, 282-83 (D. Neb. 1989)
(compelling 30(b)(6) deposition testimony about factual allegations that were not
“purely legal”).

1 “includes” some of the challenged policies, without specifying whether this contains
2 an exhaustive list of challenged policies. *See id.* Despite asking for confirmation
3 through the meet and confer process, the City has failed to supplement its
4 Interrogatory Responses to answer this simple question. *See, e.g.,* Letter from
5 Matthew Sheldon to Lee Gordon at 3 (Feb. 13, 2015) (Ellis Decl., Exh. 10).

6 **B. THE CITY’S POSITION WITH RESPECT TO TOPIC NO. 13**

7 Bank of America’s position misses the point. The issue is not whether Topic
8 13 seeks relevant information. The actual inquiry is whether a 30(b)(6) deposition is
9 the best way to acquire such information. The determination of whether Fed. R.
10 Civ. P. 33 contention interrogatories are more appropriate than a Fed. R. Civ. P.
11 30(b)(6) deposition is made on a case by case basis. *See United States v. Taylor,*
12 *166 F.R.D. 356, 363 n.7 (M.D.N.C. 1996).* In making this determination, courts
13 consider “which of the available devices is more appropriate, i.e., which device
14 would yield most reliably and in the most cost-effective, least burdensome manner
15 information that is sufficiently complete to meet the needs of the parties...”
16 *McCormick-Morgan, Inc. v. Teledyne Indus., Inc.,* 134 F.R.D. 275, 286 (N.D. Cal.
17 1991), *rev’d on other grounds,* 765 F. Supp. 611 (N.D. Cal. 1991). “[C]ontention
18 interrogatories may in certain cases be the most reliable and cost-effective discovery
19 device, which would be less burdensome than depositions at which contention
20 questions are propounded.” *Cable & Computer Tech., Inc. v. Lockheed Saunders,*
21 *Inc.,* 175 F.R.D. 646, 652 (C.D. Cal. 1997) (citing *McCormick–Morgan,* 134 F.R.D.
22 at 288). Moreover, courts in the Ninth Circuit have specifically noted that
23 information regarding the bases for the deponent-party’s legal contention is
24 “particularly suit[ed] for so-called ‘contention interrogatories.’” *Louisiana Pac.*
25 *Corp. v. Money Mkt. 1 Institutional Inv. Dealer,* 285 F.R.D. 481, 488 (N.D. Cal.
26 2012).

27 Bank of America is incorrect in stating that this topic seeks to answer “factual
28 questions.” The very wording of Topic 13 makes this clear. Bank of America’s

own definition of “LENDING DISCRIMINATION” is itself so riddled with legal nuance, that even a trained practitioner must carefully unpack its meaning before even beginning to understand Topic No. 13 as a whole. Bank of America’s definition of “LENDING DISCRIMINATION” reads as follows:

the purported conduct YOU allege or believe DEFENDANTS engaged in and that form the basis for YOUR claims in this Action, including that of offering MINORITIES loans or loan terms less favorable than those offered to non-Hispanic White borrowers with similar credit characteristics, and/or of following a policy, practice or procedure with respect to loans and lending to MINORITIES that were less advantageous than that followed with respect to non-Hispanic White borrowers, and/or of following a policy, practice, or procedure that had a disparate impact with respect to loans and lending to MINORITIES. Notice p. 3, ¶ 4.

Requiring a non-attorney 30(b)(6) witness to try and interpret this term is unlikely to yield reliable testimony. Contained within this definition are numerous phrases such as “loan terms,” “credit characteristics,” and “disparate impact” among others that have specific legal meanings that a non-attorney 30(b)(6) witness is unlikely to know and would struggle to understand in the deposition context. When topics contain complicated legal terms, courts have held that such topics should not form the basis of a 30(b)(6) deposition topic. *3M Co. v. Kanbar*, No. C06-01225 JW (HRL), 2007 WL 1794936, at *2 (N.D. Cal. June 19, 2007). In the context of Topic 13, the complexity of the “LENDING DISCRIMINATION” regarding Plaintiff’s contentions raises serious privilege concerns and problems with confidential information. *See In re Independent Serv. Orgs. Antitrust Litig.*, 168 F.R.D. 651, 654 (D. Kan. 1996) (noting that a party’s attempt to discover the bases for its opponents’ defenses and counterclaims by “Rule 30(b)(6) deposition is overbroad, inefficient and unreasonable”).

Looking at Topic 13 as a whole, Bank of America seeks discovery on what the City “contend[s] is the LENDING DISCRIMINATION” that the City alleges Bank of America engaged in since December 6, 2011. If Bank of America seeks information on what the City “contend[s],” logic alone dictates that a contention interrogatory is a better approach. But here, Topic 13 also requires a non-attorney 30(b)(6) witness to apply a complex legal definition of “LENDING DISCRIMINATION” to elucidate the City’s contentions. Even the best prepared non-attorney 30(b)(6) witness would struggle with that task. As a result, a 30(b)(6) deposition is not the “most cost-effective, least burdensome manner” for Bank of America to gather information about the City’s contentions.

TOPIC NO.14:

What YOU contend was the LENDING DISCRIMINATION that YOU allege DEFENDANTS engaged in prior to December 6, 2011, and whether and how such conduct continued thereafter.

RESPONSE TO REQUEST NO. 14:

Plaintiff incorporates by reference each of the General Objections as though fully set forth herein. In addition to the General Objections, Plaintiff objects to this Topic as vague and ambiguous, particularly as to the terms “contend” and “engaged in.” Plaintiff also objects to this Topic as compound and cumulative. Further, Plaintiff objects that this Topic is overbroad and unduly burdensome insofar as: a) it seeks information that is neither relevant to the claims or defenses in this action and b) is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Plaintiff objects to this Topic as overbroad in its use of the overbroad definition of YOU. Plaintiff also objects to this Topic to the extent it seeks information that is protected by the attorney-client privilege, attorney work product doctrine, and seeks expert and legal testimony from a lay witness. In addition,

1 Plaintiff objects that this Topic is more appropriately addressed through contention
2 interrogatories.

3 Without waiving any of its General or Specific objections, Plaintiff responds
4 that a deposition is not appropriate regarding this Topic. Plaintiff is willing to
5 continue to meet and confer with Defendants and, without any waiver of objections,
6 provide a substantive responsive to a contention interrogatory on this Topic.

7 **A. DEFENDANTS' POSITION WITH RESPECT TO TOPIC NO. 14.**

8 All of the reasons why Topic No. 13 is appropriate and necessary, apply
9 equally to Topic No. 14, and are incorporated by reference.

10 In an effort to seek recovery for conduct long time-barred by the FHA's two
11 year limitations period, the City has alleged that Defendants engaged in a
12 "continuing pattern and practice of mortgage discrimination" that started before the
13 Limitations Period and extended into the Limitations Period. *See, e.g.*, Compl.,
14 ¶¶ 2-3, 196. The City's ability to seek recovery for any conduct outside the
15 Limitations Period is contingent on its ability to establish that the same practice
16 occurred both before and after the Limitations Period, *i.e.* that there was a
17 *continuing* violation. This Topic requests deposition testimony on the City's
18 position as to exactly what conduct the City contends started prior to the Limitations
19 Period and continued into it.

20 Like Topic No. 13, this Topic seeks answers to factual questions that directly
21 relate to the summary judgment motion on limitations issues. The factual inquires
22 that would be covered under this Topic include: (1) whether the City believes the
23 purported discriminatory practices identified in response to Topic No. 13 started
24 before the Limitations Period and continued into it; (2) if so, what the City's
25 evidence is as to when the challenged practices started or ceased; and (3) whether
26 the City also believes that different practices or procedures not identified in response
27 to Topic No. 13 occurred outside the Limitations Period, *i.e.* that much of what the
28 City challenges in the Complaint did not actually occur within the Limitations

1 Period. By way of example, in the City's Complaint, it challenges Subprime loans
2 as an example of a "predatory" loan. *E.g.* Compl. ¶ 143. The City should be
3 required to provide testimony as to whether it believes Subprime lending practices
4 continued into the Limitations Period (they did not). By further example, in the
5 Complaint, the City challenges certain lending conduct by various Countrywide
6 entities. *E.g.* Compl. ¶ 1 n.1, ¶¶ 24-34. The City should be required to provide
7 testimony as to whether it believes any Countrywide entities continued to make
8 discriminatory loans within the Limitations Period (they did not). These are all
9 subjects that Judge Anderson will expect addressed in the upcoming summary
10 judgment briefing on statute of limitations issues.

11 **B. THE CITY'S POSITION WITH RESPECT TO TOPIC NO. 14**

12 All of the reasons why Topic No. 13 is inappropriate for deposition
13 testimony, apply equally to Topic No. 14, and are incorporated by reference.

14 Again, Bank of America's position misses the point. The issue is not whether
15 Topic 14 seeks relevant information. The actual inquiry is whether a 30(b)(6)
16 deposition is the best way to acquire such information. While Bank of America
17 bends over backwards to show why Topic 14 is a factual inquiry, it similarly
18 requires application of the heavily nuanced term "LENDING DISCRIMINATION."
19 Further, Topic 14 provides no time limit potentially requiring the City's 30(b)(6)
20 witness to testify on topics for which the City has not yet to receive all necessary
21 discovery. In such a case, preparing a non-attorney 30(b)(6) witness is beyond
22 burdensome. It is outright impossible.

23 Moreover, the testimony Bank of America seeks is already covered by
24 Deposition Topic 1 ("Topic 1"), but in a manner more appropriate for a 30(b)(6)
25 deposition. The 30(b)(6) designee's role is to provide the entity's interpretation of
26 events and documents. *Taylor*, 166 F.R.D. at 361. Topic 1 seeks such an
27 interpretation with much less of a danger that the 30(b)(6) witness will be required
28

1 to draw legal conclusions they are not qualified to provide. *See 3M Co.*, 2007 WL
2 1794936, at *2.

3
4 **TOPIC NO.15:**

5 What YOU contend are the types of loans or loan terms that YOU allege
6 DEFENDANTS originated to MINORITY borrowers that YOU contend were a
7 component or effect of LENDING DISCRIMINATION by DEFENDANTS.

8 **RESPONSE TO REQUEST NO. 15:**

9 Plaintiff incorporates by reference each of the General Objections as though
10 fully set forth herein. In addition to the General Objections, Plaintiff objects to this
11 Topic as vague and ambiguous, particularly as to the terms “contend,” “types of
12 loans,” “loan terms,” and “component or effect of.” Plaintiff also objects to this
13 Topic as compound and cumulative. Further, Plaintiff objects that this Topic is
14 overbroad and unduly burdensome insofar as: a) it seeks information that is neither
15 relevant to the claims or defenses in this action, b) is not reasonably calculated to
16 lead to the discovery of admissible evidence, and c) provides no time limit and thus
17 requires seeking discovery other than according to the phased time schedule and
18 limitations previously agreed to by the parties. Moreover, Plaintiff objects to this
19 Topic as overbroad in its use of the overbroad definition of YOU. Plaintiff also
20 objects to this Topic to the extent it seeks information that is protected by the
21 attorney-client privilege, attorney work product doctrine, and seeks expert and legal
22 testimony from a lay witness. In addition, Plaintiff objects that this Topic is more
23 appropriately addressed through contention interrogatories.

24 Without waiving any of its General or Specific objections, Plaintiff responds
25 that a deposition is not appropriate regarding this Topic. Plaintiff is willing to
26 continue to meet and confer with Defendants and, without any waiver of objections,
27 provide a substantive responsive to a contention interrogatory on this Topic.
28

A. DEFENDANTS' POSITION WITH RESPECT TO TOPIC NO. 15

Topic No. 15, similar to Topic No. 13, seeks deposition testimony on the types of loans and loan terms that the City believes were part of the alleged discriminatory conduct within the Limitations Period. The City makes numerous allegations in the Complaint that loan “terms or conditions [were made] on a discriminatory and legally prohibited basis.” *See, e.g.*, Compl. ¶¶ 3-5, 8, 10-11. The City also identifies several specific loan types or terms that the City believes to be discriminatory, including high-cost loans, subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and/or ARM loans with teaser rates. *See id.*, ¶ 143. Defendants are thus entitled to testimony from the City as to exactly what types of allegedly discriminatory loan products and terms the City contends were allegedly made within the Limitations Period. This is necessarily a factual questions: What kinds of loans or loan terms is the City actually challenging as discriminatory here? What is it about those loans or loan terms that make them discriminatory? The Defendants should not have to guess at what loans the City believes to be discriminatory or why those loans are discriminatory. The only reason for the City to refuse to provide discovery on this point is because the City knows that nearly all of the loans products and loan types that it challenges as discriminatory were not made during the Limitations Period, including Subprime loans. The City’s apparent fear that its case will be sunk by a deposition is not legitimate grounds for avoiding that deposition.

B. THE CITY’S POSITION WITH RESPECT TO TOPIC NO. 15

Topic 15 is even more esoteric than Topics 13-14. Such as the City can even understand this topic, Topic 15 requires a highly sophisticated legal understanding of the causational relationship between Bank of America’s “LENDING DISCRIMINATION” and the “types of loans or loan terms” the City alleges Bank of America originated to MINORITY borrowers. To even begin this legal inquiry, a

1 non-attorney 30(b)(6) witness must have a mastery of Bank of America's definition
2 of "LENDING DISCRIMINATION." For reasons previously discussed, this task
3 alone is unreasonable.

4 If Bank of America was genuinely serious about acquiring discovery on this
5 issue, there is no question that a contention interrogatory is the best solution. First,
6 Topic 15 inquires as to what the City contends it contends about its claims. Further,
7 through a contention interrogatory, Bank of America would receive a response
8 drafted by lawyers and informed by both the client and experts. In cases where the
9 inquiry is complex, as is the case here, that is a far more "reliable and cost effective"
10 means of discovery compared to the testimony of non-attorney 30(b)(6) witness.

11 *See McCormick-Morgan, Inc.*, 134 F.R.D. at 287.

12
13 **TOPIC NO.16:**

14 If YOU contend that the making of home loans to MINORITIES insured by
15 the Federal Housing Administration or the Veterans Administration constituted,
16 contributed to, or furthered the LENDING DISCRIMINATION that is the basis for
17 this Action, YOUR basis for that contention.

18 **RESPONSE TO REQUEST NO. 16:**

19 Plaintiff incorporates by reference each of the General Objections as though
20 fully set forth herein. In addition to the General Objections, Plaintiff objects to this
21 Topic as vague and ambiguous, particularly as to the terms "contend," and
22 "constituted, contributed to, or furthered." Plaintiff also objects to this Topic as
23 compound and cumulative. Further, Plaintiff objects that this Topic is overbroad and
24 unduly burdensome insofar as: a) it seeks information that is neither relevant to the
25 claims or defenses in this action, b) is not reasonably calculated to lead to the
26 discovery of admissible evidence, and c) provides no time limit and thus requires
27 seeking discovery other than according to the phased time schedule and limitations
28 previously agreed to by the parties. Moreover, Plaintiff objects to this Topic as

1 overbroad in its use of the overbroad definition of YOU. Plaintiff also objects to this
2 Topic to the extent it seeks information that is protected by the attorney-client
3 privilege, attorney work product doctrine, and seeks expert and legal testimony from
4 a lay witness. In addition, Plaintiff objects that this Topic is more appropriately
5 addressed through contention interrogatories.

6 Without waiving any of its General or Specific objections, Plaintiff responds
7 that a deposition is not appropriate regarding this Topic. Plaintiff is willing to
8 continue to meet and confer with Defendants and, without any waiver of objections,
9 provide a substantive responsive to a contention interrogatory on this Topic.

10 **1. Bank of America's Position With Respect to Topic No. 16**

11 Finally, Topic No. 16 goes directly to the core of the City's case that
12 discriminatory lending allegedly took place within the Limitations Period. The City
13 alleges in the Complaint that somehow government-sponsored Federal Housing
14 Administration loans and Department of Veterans Affairs loans are discriminatory
15 in some manner. *See* Compl. ¶ 86. Discovery between the parties has now
16 demonstrated that those are virtually the only loan types that the City defines as
17 "predatory" in the Complaint and that actually occurred within the Limitations
18 Period. Defendants are entitled to deposition testimony from the City on how loans
19 made pursuant to federal lending programs and guidelines could be discriminatory
20 and what evidence the City has to support such a theory. There is no doubt that the
21 City will be hard-pressed to explain how loan programs administered by the federal
22 government are "predatory," but that does not relieve the City of its duty to explain
23 its evidence and position on this issue through a deposition.

24 **2. The City's Position With Respect to Topic No. 16**

25 Topic 16 is unsuitable for a 30(b)(6) deposition for all of the reasons
26 previously discussed for Topics 13-15. However, Topic 16 requires the non-
27 attorney 30(b)(6) deponent to become an expert in Federal Housing Administration
28 (FHA) and Veteran's Administration (VA) loan programs. These loan programs are

1 highly specific and complex. Bank of America has produced thousands of pages of
2 documents on these types of loans alone. Even if the City's 30(b)(6) designee(s)
3 had an opportunity to review all of these documents (which they do not), there is no
4 way that the City's 30(b)(6) designee(s) could appropriately master the nuances of
5 these policies sufficiently to testify under oath. Moreover, Topic 16 requires that
6 the non-attorney City's 30(b)(6) designee(s) testify as to the relationship between
7 the FHA and VA loans and Bank of America's "LENDING DISCRIMINATION."
8 Without any background in either law or consumer lending programs, it is overly
9 burdensome to expect the City to provide reliable deposition testimony on this issue.

10
11 **IV. CONCLUSION**

12 **A. BANK OF AMERICA'S CONCLUSION**

13 Bank of America respectfully requests this Court overrule the City's
14 objections and compel full testimony on the identified topics no later than April 3,
15 2015.

16 **B. THE CITY'S CONCLUSION**

17 The City respectfully requests that this Court sustains the City's objections
18 and deny deposition testimony on the identified topics. The City can and should be
19 permitted to provide written responses to Topics 13-16.

20
21 Respectfully submitted,

22 Dated: March 10, 2015

By: /s/ STEVEN A. ELLIS

23 STEVEN A. ELLIS

24 *sellis@goodwinprocter.com*

LAURA A. STOLL

lstoll@goodwinprocter.com

GOODWIN PROCTER LLP

THOMAS M. HEFFERON (pro hac vice)

thefferon@goodwinprocter.com

MATTHEW S. SHELDON (pro hac vice)

msheldon@goodwinprocter.com

GOODWIN PROCTER LLP

901 New York Avenue NW

1 Washington, DC 20001
2 Tel.: 202.346.4000
3 Fax.: 202.346.4444

4 JAMES W. MCGARRY (pro hac vice)
5 *jmcgarry@goodwinprocter.com*
6 **GOODWIN PROCTER LLP**
7 53 State Street
8 Boston, MA 02109
9 Tel.: 617.570.1000
10 Fax.: 617.523.1231

11 Attorneys for Defendants:
12 BANK OF AMERICA CORPORATION;
13 BANK OF AMERICA, N.A., for itself
14 and as successor by merger to
15 Countrywide Bank, FSB;
16 COUNTRYWIDE FINANCIAL
17 CORPORATION; and COUNTRYWIDE
18 HOME LOANS, INC.

19 Dated: March 10, 2015

20 By: /s/ CHRISTOPHER PITOUN *

21 ELAINE T. BYSZEWSKI
22 *elaine@hbsslaw.com*
23 LEE M. GORDON
24 *lee@hbsslaw.com*

25 CHRISTOPHER PITOUN
26 *christopherp@hbsslaw.com*
27 **HAGENS BERMAN SOBOL**
28 **SHAPIRO, LLP**
301 North Lake Avenue, Suite 203
Pasadena, CA 91101
Tel. 213.330.7150
Fax: 213.330.7152

Attorneys for Plaintiff:
CITY OF LOS ANGELES

* *with permission*

Exhibit 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CITY OF LOS ANGELES,
Plaintiff,

v.

BANK OF AMERICA
CORPORATION,
et al.,

Defendants.

Case No. CV 13-9046 PA (AGRx)3

SCHEDULING ORDER [FED. R. CIV. P.
16(b)]

1. Establishing a Discovery Cut-off
Date of June 8, 2015
2. Setting Motion Cut-off date of June
15, 2015
3. Setting Final Pretrial Conference for
July 17, 2015, at 1:30 p.m.
4. Setting Jury Trial Date of August 18,
2015, at 9:00 a.m.

1. Discovery Cut-Off. This is the last date to complete discovery, including expert discovery, and the resolution of any discovery motions before the magistrate judge. If expert witnesses are to be called at trial, the parties shall designate experts to be called at trial and provide reports required by Fed. R. Civ. P. 26(a)(2)(B), not later than eight weeks prior to the discovery cutoff date. Rebuttal expert witnesses shall be designated and reports provided as required by Fed. R. Civ. P. 26(a)(2)(B), not later than five weeks prior to the

1 discovery cutoff date. Failure to timely comply with this deadline may result in the expert
2 being excluded at trial as a witness. The Court requires compliance with Local Rule 37-1
3 and 37-2 in the preparation and filing of discovery motions. Discovery motions may not be
4 heard on an ex parte basis.

5 2. Joinder of Parties and Amendment of Pleadings. The deadline for joining parties
6 and amending pleadings is listed in the "Schedule of Trial and Pretrial Dates" issued by the
7 Court. Any motions to join other parties or for leave to amend the pleadings shall be filed
8 and served at least twenty-eight (28) days prior to the hearing deadline as required by Local
9 Rule 6-1 so that they can be heard and decided prior to the deadline. This deadline does not
10 apply if the deadline for joining parties or amending pleadings has already been calendared
11 or occurred by virtue of an order issued by this Court or another court.

12 In addition to the requirements of Local Rule 15-1, all motions to amend the
13 pleadings shall (1) state the effect of the amendment; (2) be serially numbered to
14 differentiate the amendment from previous amendments and (3) state the page, line
15 number(s), and wording of any proposed change or addition of material.

16 For the Court's ease of reference, the moving party shall submit to chambers a
17 redlined version of the amended pleading.

18 3. Motion Filing Cut-Off. The Court hears motions on Mondays at 1:30 p.m. The
19 motion filing cut-off date is the last day motions may be heard (not filed). The Court will
20 not decide late motions. Issues left undetermined by the passage of the motion cut-off date
21 should be listed as issues for trial in the Final Pretrial Conference Order. As an exception to
22 the above, motions in limine dealing with evidentiary matters may be heard at or before trial;
23 however, summary judgment motions disguised as motions in limine will not be heard.
24 Parties need not wait until the discovery cut-off to bring motions for summary judgment or
25 partial summary judgment. However, in the usual case, the Court expects that more than the
26 minimum notice will be provided to counsel opposing motions for summary judgment. In
27 the usual case, the parties should confer and agree on the date for setting such motions.
28

1 Ex parte applications are entertained solely for extraordinary relief. See Mission
2 Power Eng. Co. v. Continental Casualty Co., 883 F.Supp. 488 (C.D. Cal. 1995). Strict
3 adherence to proper ex parte procedures is required for any ex parte application filed with
4 the Court.

5 4. Stipulations to Extend Time. Stipulations to extend the time to file any required
6 document or to continue any pretrial or trial date must set forth:

7 (a) the existing due date or hearing date;
8 (b) the current pretrial conference date and trial date;
9 (c) the specific reasons supporting good cause for granting the extension or
10 continuance. For example, a statement that a continuance “will promote settlement” or that
11 the parties decided to suspend discovery while engaging in settlement discussions is
12 insufficient.

13 (d) whether there have been any prior requests for extensions or continuances, and
14 whether these were granted or denied by the Court.

15 5. Summary Judgment Motions. The Separate Statement of Undisputed Facts is to be
16 prepared in a two column format. The left hand column should set forth the allegedly
17 undisputed fact. The right hand column should set forth the evidence that supports the
18 factual statement. The fact statements should be set forth in sequentially numbered
19 paragraphs. Each paragraph should contain a narrowly focused statement of fact. Each
20 numbered paragraph should address a single subject in as concise a manner as possible.

21 The opposing party’s statement of genuine issues must be in two columns and
22 track the movant’s separate statement exactly as prepared. The document must be in two
23 columns; the left hand column must restate the allegedly undisputed fact, and the right hand
24 column must indicate either undisputed, or disputed. The opposing party may dispute all or
25 only a portion of the statement, but if disputing only a portion, must clearly indicate what
26 part is being disputed. Where the opposing party is disputing the fact in whole or part, the
27 opposing party must, in the right hand column, label and restate the moving party’s evidence
28 in support of the fact, followed by the opposing party’s evidence controverting the fact.

1 Where the opposing party is disputing the fact on the basis of an evidentiary objection, the
2 party must cite to the evidence alleged to be objectionable and state the ground of the
3 objection and nothing more. **No argument should be set forth in this document.**

4 The opposing party may submit additional material facts that bear on or relate to
5 the issues raised by the movant, which shall follow the format described above for the
6 moving party's separate statement. These additional facts shall follow the movant's facts,
7 shall continue in sequentially numbered paragraphs (i.e., if movant's last statement of fact
8 was set forth in paragraph 30, then the first new fact will be set forth in paragraph 31), and
9 shall set forth in the right hand column the evidence that supports that statement.

10 The moving party, in its reply, shall respond to the additional facts in the same
11 manner and format that the opposition party is required to adhere to in responding to the
12 statement of undisputed facts, as described above.

13 (a) Supporting Evidence. No party should submit any evidence other than the
14 specific items of evidence or testimony necessary to support or controvert a proposed
15 statement of undisputed fact. Thus, for example, the entire transcript of a deposition, entire
16 sets of interrogatory responses, and documents that do not specifically support or controvert
17 material in the separate statements, should not be submitted in support or opposition to a
18 motion for summary judgment. Any such material will not be considered.

19 Evidence submitted in support or opposition to a motion should be submitted
20 either by way of stipulation or as exhibits to declarations sufficient to authenticate the
21 proffered evidence, and should not be attached to the Memorandum of Points and
22 Authorities. The Court will accept counsel's authentication of deposition transcript, of
23 written discovery responses, and of the receipt of documents in discovery if the fact that
24 the document was in the opponent's possession is of independent significance.

25 Documentary evidence as to which there is no stipulation regarding foundation must be
26 accompanied by the testimony, either by declaration or properly authenticated deposition
27 transcript, of a witness who can establish its authenticity.

28

1 If evidence in support of or in opposition to a motion exceeds twenty pages, the
2 evidence must be in a separate bound volume and include a Table of Contents.

3 (b) Objections to Evidence. If a party disputes a fact based in whole or in part on
4 an evidentiary objection, the ground of the objection, as indicated above, should be stated in
5 the separate statement but not argued in that document. Evidentiary objections are to be
6 addressed in a separate memorandum to be filed with the opposition or reply brief of the
7 party. This memorandum should be organized **to track the paragraph numbers of the**
8 **separate statement in sequence**. It should identify the specific item of evidence to which
9 objection is made, the ground of the objection, and a very brief argument with citation to
10 authority as to why the objection is well taken. The following is an example of the format
11 contemplated by the Court:

12 Separate Statement Paragraph 1: Objection to the supporting
13 deposition transcript of Jane Smith at 60:1-10 on the grounds
14 that the statement constitutes inadmissible hearsay and no
15 exception is applicable. To the extent it is offered to prove her
16 state of mind, it is irrelevant since her state of mind is not in
17 issue.

18 Fed. R. Evid. 801, 802.

19 Do not submit blanket or boilerplate objections to the opponent's statements of
20 undisputed fact: these will be disregarded and overruled.

21 (c) The Memorandum of Points and Authorities. The movant's memorandum of
22 points and authorities should be in the usual form required under Local Rule 7 and should
23 contain a narrative statement of facts as to those aspects of the case that are before the Court.
24 All facts should be supported with citations to the paragraph number in the Separate
25 Statement that supports the factual assertion and not to the underlying evidence.

26 Unless the case involves some unusual twist on Rule 56, the motion need only
27 contain a brief statement of the Rule 56 standard; the Court is familiar with the Rule and
28

1 with its interpretation under Celotex and its progeny. If at all possible, the argument should
2 be organized to focus on the pertinent elements of the cause(s) of action or defense(s) in
3 issue, with the purpose of showing the existence or non-existence of a genuine issue of
4 material fact for trial on that element of the claim or defense.

5 Likewise, the opposition memorandum of points and authorities should be in the
6 usual form required by Local Rule 7, and where the opposition memorandum sets forth
7 facts, the memorandum should cite to paragraphs in the separate statement if they are not in
8 dispute, to the evidence that contravenes the fact where the fact is in dispute, or, if the fact is
9 contravened by an additional fact in the statement of genuine issues, the citation should be to
10 such fact by paragraph number.

11 (d) Timing. In virtually every case, the Court expects that the moving party will
12 provide more than the minimum twenty-eight (28) day notice for such motions. The moving
13 party shall submit a copy of the Statement of Uncontroverted Facts and Conclusions of Law
14 to the Court's ECF e-mail address, in WordPerfect format (X6 or earlier versions) or
15 Microsoft Word (Word 2010 or earlier versions).

16 6. Motions in Limine. Before filing any motion in limine, counsel for the parties
17 shall confer pursuant to Local Rule 7-3 in a good faith effort to eliminate the necessity for
18 hearing the motion in limine or to eliminate as many of the disputes as possible. It shall be
19 the responsibility of counsel for the moving party to arrange for this conference. The
20 conference shall take place in person within seven days of service upon opposing counsel of
21 a letter requesting such conference. Unless counsel agree otherwise, the conference shall
22 take place at the office of the moving party. If both counsel are not located in the same
23 county in the Central District, the conference may take place by telephone. The moving
24 party's letter shall identify the testimony, exhibits, or other specific matters alleged to be
25 inadmissible and/or prejudicial, shall state briefly with respect to each such matter the
26 moving party's position (and provide any legal authority which the moving party believes is
27 dispositive), and specify the terms of the order to be sought.

(a) If counsel are unable to resolve their differences, they shall prepare a Joint Motion in Limine. The Joint Motion in Limine shall consist of one document signed by all counsel. The Joint Motion in Limine shall contain a clear identification of the testimony, exhibits, or other specific matters alleged to be inadmissible and/or prejudicial and a statement of the specific prejudice that will be suffered by the moving party if the motion is not granted. The identification of the matters in dispute shall be followed by each party's contentions and each party's memorandum of points and authorities. The title page of the Joint Motion in Limine must state the hearing date for the motions in limine and the trial date.

(b) Unless otherwise ordered by the Court, motions in limine will be heard on the date indicated in the Schedule of Trial and Pretrial Dates issued by the Court. Unless the Court in its discretion otherwise allows, no motions in limine shall be filed or heard on an ex parte basis absent a showing of irreparable injury or prejudice not attributable to the lack of diligence of the moving party. The moving party shall serve its portion of the Joint Motion in Limine on the responding party fourteen (14) days prior to the date for filing of motions in limine indicated in the Schedule of Trial and Pretrial Dates. The responding party shall then serve the opposition portion of the Joint Motion in Limine on the moving party both on paper and in an electronic format seven (7) days prior to the date for the filing of motions in limine. The moving party shall incorporate the responding party's portion into the Joint Motion in Limine, add its arguments in reply, and file and serve the Joint Motion in Limine. Neither party's portions of a Joint Motion in Limine shall exceed eight (8) pages.

(c) Joint Motions in Limine made for the purpose of precluding the mention or display of inadmissible and/or prejudicial matter in the presence of the jury shall be accompanied by a declaration from the moving party that includes the following: (1) a clear identification of the specific matter alleged to be inadmissible and/or prejudicial; (2) a representation to the Court that the subject of the motion in limine has been discussed with opposing counsel, and that opposing counsel has either indicated that such matter will be mentioned or displayed in the presence of the jury before it is admitted in evidence or that

1 counsel has refused to stipulate that such matter will not be mentioned or displayed in the
2 presence of the jury unless and until it is admitted in evidence; and (3) a statement of the
3 specific prejudice that will be suffered by the moving party if the motion in limine is not
4 granted.

5 (d) Unless ordered by the Court, no supplemental or separate memorandum of
6 points and authorities shall be filed by either party in connection with any motion in limine.

7 (e) The Court will not consider any motion in limine in the absence of a joint
8 motion or a declaration from counsel for the moving party establishing that opposing
9 counsel: (1) failed to confer in a timely manner; (2) failed to provide the opposing party's
10 portion of the joint motion in a timely manner; or (3) refused to sign and return the joint
11 motion after the opposing party's portion was added.

12 (f) The failure of any counsel to comply with or cooperate in the foregoing
13 procedures will result in the imposition of sanctions, including a resolution of the issue
14 against the party refusing to cooperate.

15 7. Pretrial Conference and Trial Setting. Compliance with the requirements of Local
16 Rule 16 is mandatory. Counsel shall submit carefully prepared Memoranda of Contentions
17 of Fact and Law (which may also serve as the trial briefs) and Proposed Pre-Trial
18 Conference Order ("PTCO") in accordance with the provisions of Local Rules 16-2.8
19 through 16-6. The Proposed Pre-Trial Conference Order shall conform to the example set
20 forth in Appendix A to the Local Rules, modified as necessary to comply with this order.

21 The Memoranda of Contentions of Fact and Law, Exhibit Lists, and Witness Lists
22 shall be served and filed no later than fourteen (14) days before the Pre-Trial Conference.
23 The Proposed Pre-Trial Conference Order shall be filed fourteen (14) days before the Pre-
24 Trial Conference.

25 The Proposed Pre-Trial Conference Order must contain a Table of Contents. Place
26 in all capital letters and in bold the separately numbered headings for each category in the
27 PTCO. Under paragraph 1, list each claim, counterclaim, or defense that has been dismissed
28 or abandoned. In multiple party cases where not all claims or counterclaims will be

1 prosecuted against all remaining parties on the other side, please specify to which party each
2 claim or counterclaim directed. The factual issues in dispute should track the elements of a
3 claim or defense upon which the jury would be required to make findings. Counsel should
4 state issues in ultimate fact form, not as evidentiary fact issues (i.e., “was the defendant
5 negligent,” “was defendant’s negligence the proximate cause of plaintiff’s injury;” not “was
6 the plaintiff standing on the corner of 5th and Spring at 10:00 a.m. on May 3”). Issues of
7 law should state legal issues upon which the Court will be required to rule after the Pre-Trial
8 Conference, including during the trial, and should not list ultimate fact issues to be
9 submitted to the trier of fact.

10 In drafting the PTCO, the Court expects that counsel will attempt to agree on and
11 set forth as many non-contested facts as possible. The Court will normally read the
12 uncontested facts to the jury at the start of the trial. Carefully drafted and comprehensively
13 stated stipulation of facts will reduce the length of trial and increase jury understanding of
14 the case.

15 If expert witnesses are to be called at trial, each party must list and identify its
16 respective expert witnesses, both retained and non-retained. Failure of a party to list and
17 identify an expert witness in the Proposed Pre-Trial Conference Order shall preclude a party
18 from calling that expert witness at trial.

19 This case has been placed on calendar for a Final Pretrial Conference (“PTC”)
20 pursuant to F. R. Civ. P. 16 and Local Rule 16-1, unless the PTC was expressly waived at
21 the Scheduling Conference by the Court. Unless excused for good cause, each party
22 appearing in this action shall be represented at the PTC and all pretrial meetings of counsel,
23 by lead trial counsel. The failure to attend the PTC or to submit the required pretrial
24 documents may result in the dismissal of the action, striking the answer and entering a
25 default, and/or the imposition of sanctions.

26 A continuance of the Final Pretrial Conference at counsel’s request or stipulation is
27 highly unlikely. Counsel should plan to do the necessary pretrial work on a schedule which
28 will insure its completion with time to spare before the Final Pretrial Conference.

Specifically, failure to complete discovery work, including expert discovery, is not a ground for a continuance.

Compliance with the requirements of Local Rules 16-1 to 16-13 is required by the Court. Carefully prepared Memoranda of Contentions of Fact (which may also serve as the trial brief) and a proposed Final Pretrial Conference Order shall be submitted in accordance with the provisions of Local Rule 16-6 and the form of the proposed Final Pretrial Conference Order shall be in conformity with the format set forth in Appendix A to the Local Rules.

At the PTC, counsel should be prepared to discuss means of streamlining the trial, including, but not limited to: bifurcation, presentation of non-critical testimony by deposition excerpts, stipulations as to the content of testimony, presentation of testimony on direct examination by declaration subject to cross-examination, and qualification of experts by admitted resumes. In rare cases where the PTC is waived by the Court, counsel must follow Local Rule 16-10.

8. Summary of Witness Testimony and Time Estimates. Counsel shall prepare a list of their witnesses, including a brief summary (two to three paragraphs) of each witness' expected testimony and an estimate of the length of time needed for direct examination; and whether the witness will testify by deposition or in person. Counsel shall exchange these lists with opposing counsel. **Counsel shall jointly file a single list of witness testimony summaries, including estimates for direct examination of their own witnesses and estimates for cross-examination of opposing witnesses.** These statements shall be filed at the time counsel file the Proposed Pre-Trial Conference Order, i.e., fourteen (14) days before the Pre-Trial Conference. A copy of the Joint Trial Witness Form is attached to this Order.

If a party desires to offer deposition testimony into evidence at trial, he shall designate only those relevant portions of same which he wishes to read at trial and advise opposing counsel of same. Opposing counsel shall then designate those relevant portions of such deposition which he wishes to offer in evidence. All objections to any such testimony

1 shall be made in writing and filed at the same time counsel file the Proposed Pre-Trial
2 Conference Order so the Court may consider whether ruling on such objections will either
3 facilitate the conduct of the trial or result in the disposition of certain evidentiary matters
4 that may assist continuing settlement negotiations.

5 9. Jury Instructions and Verdict Forms. Fourteen (14) days prior to counsel's Rule
6 16 pre-trial meeting, counsel shall exchange proposed jury instructions (general and special)
7 and special verdict forms (if applicable). Seven (7) days prior to the Rule 16-2 meeting,
8 counsel shall exchange any objections to the instructions and special verdict forms. Prior to,
9 or at the time of the Rule 16 meeting, counsel shall meet and confer with the goal of
10 reaching agreement on one set of joint jury instructions and one special verdict form.

11 The parties should make every attempt to agree upon the jury instructions before
12 submitting them to the Court. The Court expects counsel to agree on the substantial
13 majority of jury instructions, particularly when pattern instructions provide a statement of
14 applicable law. When the Manual of Model Civil Jury Instructions for the Ninth Circuit
15 provides a version of an applicable requested instruction, the parties should submit the most
16 recent version of the Model instruction. Where language appears in brackets in the model
17 instruction, counsel shall select the appropriate text and eliminate the inapplicable bracketed
18 text. Where California law applies, counsel should use the current edition of the Judicial
19 Council of California Civil Jury Instructions ("CACI"). If neither of the above sources is
20 applicable, counsel are directed to use the instructions from O'Malley, Grenig & Lee
21 (formerly Devitt, et al.), Federal Jury Practice and Instructions (latest edition). Each
22 requested jury instruction shall cover only one subject or principle of law and shall be
23 numbered and set forth in full on a separate page, citing the authority or source of the
24 requested instruction (except for the "clean" jury copy discussed below).

25 When the parties disagree on an instruction, the party opposing the instruction
26 must attach a short statement (one to two paragraphs) supporting the objection, and the party
27 submitting the instruction must attach a short statement supporting the instruction. Each
28

statement should be on a separate page and should follow directly after the disputed instruction.

The parties ultimately must submit one document or, if the parties disagree over any proposed jury instructions, two documents. If the parties submit two documents, those documents shall consist of: (1) a set of Joint Proposed Jury Instructions and (2) a set of Disputed Jury Instructions, along with reasons supporting and opposing each disputed instruction in the format set forth in the previous paragraph.

The parties must file proposed jury instructions fourteen (14) days before the Pre-Trial Conference. If the court is closed that day, counsel shall file the proposed instructions the preceding Friday. No later than 5:00 p.m. on the date such instructions are due, the parties must submit conformed courtesy copies to the Court's courtesy box located outside the entrance to chambers on the Spring Street level of the U.S. Courthouse. Counsel shall also submit a copy of the proposed jury instructions to the Court's ECF e-mail address in WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or earlier versions) in accordance with this paragraph and the previous paragraph.

The Court will send a copy of the instructions into the jury room for the jury's use during deliberations. Accordingly, in addition to the file copies described above, the e-mail containing the jury instructions shall contain a "clean set" of Joint Proposed and/or Disputed Jury Instructions, containing only the text of each instruction set forth in full on each page, with the caption "Court's Instruction No. ____" (eliminating titles, supporting authority, indication of party proposing, etc.).

An index page shall accompany all jury instructions submitted to the Court. The index page shall indicate the following:

- (a) The number of the instruction;
- (b) A brief title of the instruction;
- (c) The source of the instruction and any relevant case citations; and
- (d) The page number of the instruction.

EXAMPLE:

	<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
1	1	Trademark-Defined	9th Cir. 15.3.2	7
2		(15 U.S.C. § 1127)		

Along with the jury instructions, counsel shall submit any necessary special verdict form fourteen (14) days before the Pre-Trial Conference and e-mail any such proposed special verdict form in WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or earlier versions) to the Court's ECF e-mail address.

10. Voir Dire Questions. Counsel may, but need not, submit brief proposed voir dire questions for the jury at the Pre-Trial Conference. The Court will conduct its own voir dire after consulting any proposed voir dire submitted by counsel.

11. Joint Statement of the Case. Counsel shall submit a joint statement of the case at the Pretrial Conference. The joint statement of the case will be read to the prospective panel of jurors prior to the commencement of voir dire. The statement should not exceed one page. The statement shall be filed with the Court at the Pre-Trial Conference.

12. Exhibits. The parties shall file their witness lists and exhibits lists in accordance with Local Rule 16. Counsel are to assemble their exhibits by placing them in three-ring binders labeled on the spine portion of the binder showing both the volume number and the exhibit numbers. Each exhibit shall be separated by a tabbed divider on the right side. Counsel shall provide original exhibits for the Courtroom Deputy Clerk and a duplicate set for the judge. The original exhibits shall be tagged with the appropriate exhibit tags in the upper or lower right corner of the first page of each exhibit. Each binder shall contain a Table of Contents. Counsel must comply with Local Rule 26-4 when numbering the exhibits. The Clerk's Office, Room G-8, 312 North Spring Street, Los Angeles, California can supply counsel with appropriate exhibit tags.

13. Pre-Trial Exhibit Stipulation. The parties shall prepare a Pre-Trial Exhibit Stipulation which shall contain each party's numbered list of trial exhibits, with objections, if any, to each exhibit including the basis of the objection and the offering party's response. All exhibits to which there is no objection shall be deemed admitted. All parties shall

1 stipulate to the authenticity of exhibits whenever possible, and the Pre-Trial Exhibit
 2 Stipulation shall identify any exhibits whose authenticity has not been stipulated to and the
 3 specific reasons for the party's failure to stipulate.

4 The Stipulation shall be substantially in the following form:

5 Pre-Trial Exhibit Stipulation

6 Plaintiff's Exhibits

7 Number Description Objection Response to Objection

8

9 Defendant's Exhibits

10 Number Description Objection Response to Objection

11

12 The Pre-Trial Exhibit Stipulation shall be filed at the same time as counsel files the
 13 Proposed Pre-Trial Conference Order. Failure to comply with this paragraph shall constitute
 14 a waiver of all objections.

15 The Court requires the following to be submitted to the Courtroom Deputy Clerk
 16 on the first day of trial:

- 17 (1) The original exhibits with the Court's exhibit tags. Plaintiff shall use
 18 yellow tags; defendant shall use blue tags. Each tag shall be stapled to
 19 the front of the exhibit on the upper right corner and include the case
 20 number, case name, and exhibit number.
- 21 (2) One bench book with a copy of each exhibit for the Court's use, tabbed
 22 as described above; a copy of the witness lists).
- 23 (3) Three (3) copies of exhibit lists. The exhibit list should also be
 24 submitted to the Court's ECF e-mail address in both a PDF version and
 25 a WordPerfect(X6 or earlier versions) or Microsoft Word (Word 2010
 26 or earlier versions) version.
- 27 (4) Three (3) copies of witness lists in the order in which the witnesses will
 28 be called to testify.

1 All counsel are to meet no later than fourteen (14) days before trial to discuss and
2 agree to the extent possible on issues including foundation and admissibility.

3 14. Findings of Fact and Conclusions of Law. For a non-jury trial, counsel for each
4 party shall file and serve proposed findings of fact and conclusions of law fourteen days
5 before trial. The parties should also e-mail these proposed findings of fact and conclusions
6 of law in WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or
7 earlier versions) to the Court's ECF e-mail address. Counsel for each party shall then:

- 8 (1) Underline or highlight in red the portions which it disputes;
- 9 (2) Underline or highlight in blue the portions which it admits; and
- 10 (3) Underline or highlight in yellow the portions which it does not dispute,
11 but deems irrelevant.

12 Counsel may agree with a part of a finding or conclusion, disagree with a part of it
13 and/or consider a part of it irrelevant.

14 The parties should then file and serve their respective objections to the other
15 party's proposed findings of fact and conclusions of law. Courtesy copies of the marked
16 copies shall be delivered to the courtesy box next to the entrance to chambers on the Spring
17 Street level of the U.S. Courthouse, 312 North Spring Street, by 12:00 noon of the business
18 day following filing.

19 15. Settlement. Local Rule 16-15.2 provides that the Settlement Conference shall be
20 conducted not later than 45 days before the Pretrial Conference. The Court believes that in
21 most cases completion of all discovery and dispositive motions will help the parties assess
22 their positions before they embark on the costly pre-trial process. However, in many cases,
23 the parties find it more difficult to settle after they have incurred the cost of all discovery
24 and motion practice. Accordingly, the Court strongly encourages counsel and the parties to
25 pursue settlement earlier.

26 Notwithstanding the provisions of Local Rule 16-15.5, unless the parties have
27 received prior approval by the Court, lead trial counsel and each party shall appear at the
28 settlement proceeding in person or, in the case of a corporation or other non-governmental

1 entity, by a corporate representative with final authority to settle the case and who is
2 knowledgeable about the facts of the case. Representatives of insurers with decision-making
3 authority are also required to attend the settlement proceedings in person unless their
4 presence is expressly excused by the Court. The Court's requirement that lead trial counsel,
5 parties, corporate representatives, and insurer representatives must appear at the settlement
6 proceedings in person unless they have been expressly excused by the Court applies to
7 individuals located both within and outside the Central District of California.

8 The Court has a keen interest in helping the parties achieve settlement. If the
9 parties believe that it would be more likely that a settlement would be reached if they
10 conduct settlement conference at an earlier time than that specified by the Court, they should
11 conduct it at that time. In any event, the parties must together file a single Joint Status
12 Report re Settlement at the time they file the Proposed Pretrial Order.

13 The Court will not conduct settlement conferences in non-jury cases which the
14 Court will try. In jury cases, the Court will conduct a settlement conference at the parties'
15 request if three conditions exist:

- 16 1. The parties are satisfied that the fact issues in the case will be tried to a jury;
- 17 2. All significant pre-trial rulings which Court must make have been made; and
- 18 3. The parties desire the Court to conduct the conference, understanding that if
19 settlement fails, the Court will preside over the trial of the case.

20 16. Sanctions. The failure to attend the pretrial conference or to submit in conformity
21 with this order, the jury instructions, pre-trial exhibit stipulation, joint statement of the case,
22 voir dire questions, summary of witness testimony and times estimates, proposed Pretrial
23
24
25
26
27
28

1 Conference Order or the memorandum of contentions of fact and law may result in the
2 dismissal of the action, striking the answer and entering default and/or the imposition of
3 sanctions.

4 IT IS SO ORDERED.

5 Dated: August 15, 2014



Percy Anderson
UNITED STATES DISTRICT JUDGE

8
9 Revised: 10/29/2013
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOINT TRIAL WITNESS ESTIMATE FORM

CA _____
 SE: _____

TRIAL DATE: _____

	WITNESS NAME	PARTY CALLING WITNESS AND ESTIMATE	X- EXAMINER 'S ESTIMATE	DESCRIPTION OF TESTIMONY	COMMENTS
1					
2					
3					
4					
5					
6					
7					
8					
9					
1					
	TOTAL ESTIMATES THIS PAGE:				

Instructions:

- (1) List witnesses (last name first); (2) For description, be extremely brief, e.g., “eyewitness to accident.” Or “expert on standard of care.”
 (3) Use estimates within fractions of an hour, rounded off to closest quarter of an hour. E.g., if you estimate 20 minutes, make it .25. An

estimate of one and one-half hours would be 1.5. An estimate of three-quarters of an hour would be .75; (4) Note special factors in “Comments” column. E.g., “Needs interpreter.” (5) Entries may be in handwriting if very neat and legible.

Exhibit 2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-9046 PA (AGRx)	Date	February 3, 2015
Title	City of Los Angeles v. Bank of America Corporation, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE
------------------------	--

Stephen Montes Kerr	Not Reported	N/A
---------------------	--------------	-----

Deputy Clerk	Court Reporter	Tape No.
--------------	----------------	----------

Attorneys Present for Plaintiff:

None

Attorneys Present for Defendants:

None

Proceedings: IN CHAMBERS — COURT ORDER

Before the Court is the parties' Joint Application to Amend Scheduling Order (Docket No. 79). The Court concludes that the parties have not established good cause for the five-month continuance they seek. The Court will, however, continue the trial from August 18, 2015, to December 1, 2015. All other pretrial dates that have not yet expired will be continued by a corresponding amount of time. Dates set by the Court in this action are listed in the "Schedule of Trial and Pretrial Dates" attached to this order. The dates set by the Court are firm dates. Absent extraordinary circumstances, which must satisfy the requirements of Federal Rule of Civil Procedure 16(b) and be brought to the Court's attention in a timely manner, the Court will not modify these dates.

The Court further sets April 27, 2015, as the last date for the hearing on defendants' contemplated motion for summary judgment focused on their statute of limitations defense. That motion shall be noticed and served pursuant to Local Rule 6-1 such that the hearing is calendared for no later than April 27, 2015.

IT IS SO ORDERED.

Schedule of Trial and Pretrial Dates

CASE NO.:	CV 13-09046
------------------	--------------------

PARTIES: City of Los Angeles
-v-
Bank of America Corporation, et al.

COMPLAINT FILED: 12/06/13

TRIAL TYPE:	Jury
--------------------	-------------

SETTLEMENT CHOICE:
Court/Magistrate
Court's Mediation Panel
Private Dispute Resolution X
Judicial Settlement Panel

DATE	MATTER
12/01/15	Jury Trial at 9:00 a.m.
11/26/15	File Final Trial Exhibit Stipulation
11/23/15	Hearing on Motions in Limine at 1:30 p.m. Hearing on Disputed Jury Instructions at 1:30 p.m.
11/06/15	Final Pretrial Conference at 1:30 p.m. Motions in Limine to be Filed Proposed Voir Dire Questions & Agreed-to Statement of Case
10/23/15	Lodge Pretrial Conference Order & Pretrial Exhibit Stipulation File Contentions of Fact & Law Exhibit & Witness Lists File Joint Status Report Regarding Settlement File Agreed Upon Set of Instructions & Verdict Forms File Joint Statement Regarding Disputed Instructions, Verdicts, etc.
10/05/15	Last Date to Conduct Settlement Conference
09/28/15	Last Day for Hearing Motions
09/21/15	Discovery Cut-off
11/10/14	Last Day for Hearing on Motion to Amend Pleadings or Add Parties

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 601 South Figueroa Street, 41st Floor, Los Angeles, California 90017.

On **March 10, 2015**, I served the following documents by placing a true copy thereof in a sealed envelope(s) on the persons below as follows:

**STIPULATION REGARDING DEFENDANTS' MOTION TO COMPEL
RULE 30(b)(6) DEPOSITION OF PLAINTIFF CITY OF LOS ANGELES**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I further certify that some of the participants in the case are not registered CM/ECF users. I have served the foregoing document(s) to the following non-CM/ECF participants:

Michael N. Feuer
City Attorney
LOS ANGELES CITY ATTORNEY'S
OFFICE
City Hall East
200 North Main Street, 6th Floor
Los Angeles, CA 90012

Counsel for Plaintiff: *City of Los Angeles*
Tel. 213.978.8100
Fax: 213.978.8785
Mike.feuer@lacity.org

☒ By (MAIL). I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

☐ By (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by FedEx, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated above, with fees for overnight delivery paid or provided for.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction this service was made and that the foregoing is true and correct.

Executed on **March 10, 2015**, at Los Angeles, California.

Simone Robinson
(Type or print name)


(Signature)